No. 89-1399

FILED

APR 18 1990

JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1989

ROBIN GEORGE,

Petitioner,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, Fourth Appellate District, Division One

BRIEF FOR THE ISKCON RESPONDENTS IN OPPOSITION

MICHAEL W. MCCONNELL
Counsel of Record
ANDREW L. FREY
THOMAS C. BERG
MAYER, BROWN & PLATT
190 S. La Salle St.
Chicago, IL 60603
(312) 701-7201

EDWARD MCGLYNN GAFFNEY, JR.
1149 S. La Jolla Ave.
Los Angeles, CA 90035
(213) 934-8307

DAVID LIBERMAN
2049 Century Park East
Suite 3160
Los Angeles, CA 90067
(213) 277-9288

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether compensatory and punitive damages may be awarded against a religious group for false imprisonment and intentional infliction of emotional distress on the theory that religious practices including vegetarianism, monastic living, chanting, and early morning devotions constitute a form of "coercive persuasion."

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT 2

ARGUMENT 10

I. The Judgment Below Rests On Adequate And Independent State Grounds 10

II. The Petition Raises Nothing More Than A Disagreement With The Court Below Over The Facts Of The Case 13

III. The Court Of Appeal's Conclusion That Petitioner's Claims Of False Imprisonment And Intentional Infliction Of Emotional Distress Violate The Free Exercise Clause Is Clearly Correct ... 16

CONCLUSION 20

TABLE OF AUTHORITIES

Page

CASES:

Agarwal v. Johnson, 25 Cal. 3d 932, 160 Cal.Rptr. 141, 603 P.2d 58 (1979) 13

Bose Corp. v. Consumers Union, 466 U.S. 485 (1984) 5

Davidson v. City of Westminster, 32 Cal. 3d 197, 185 Cal. Rptr. 252, 649 P.2d 894 (1982) 13

Everson v. Board of Education, 330 U.S. 1 (1947) 18

Fox Film Corp. v. Muller, 296 U.S. 207 (1935) 10

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) 19

Harris v. Reed, 109 S. Ct. 1038 (1989)..... 10

Herb v. Pitcairn, 324 U.S. 117 (1945)..... 11

ISCKON v. Barber, 650 F.2d 430 (2d Cir. 1981) 7, 9

Jaffe v. Alexis, 659 F.2d 1018 (9th Cir. 1981)..... 9

Kropinski v. World Plan Executive Council, 853 F.2d 948 (D.C. Cir. 1988)..... 17

Michigan v. Long, 463 U.S. 1032 (1983) 10

Molko v. Holy Spirit Association, 46 Cal. 3d 1092, 252 Cal. Rptr. 122, 762 P.2d 46 (1988), *cert. denied*, 109 S. Ct. 2110 (1989)..... 12, 17

Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590 (1875)..... 10

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 5

TABLE OF AUTHORITIES – Continued

Page

People v. Murphy, 98 Misc. 2d 235, 413 N.Y.S.2d 540 (Sup. Ct. 1977) 7

Thomas v. Review Board, 450 U.S. 707 (1981)..... 19

United States v. Ballard, 322 U.S. 78 (1944)..... 18

United States v. Fishman, No. CR-88-0616-DLJ (N.D. Cal. Apr. 13, 1990)..... 17

United States v. Kozminski, 108 S. Ct. 2751 (1988) 18

United States v. Silberman, 464 F. Supp. 866 (M.D. Fla. 1979) 9

Wollersheim v. Church of Scientology, 260 Cal. Rptr. 331 (Cal. App. 1989), *cert. pending*, Nos. 89-1361 & 89-1367 11

STATUTES AND RULES:

Sup. Ct. R. 15.1..... 5

Cal. Civ. Code § 25.9 (West 1982)..... 12

Cal. Civ. Code § 34.5 (West 1982)..... 12

Cal. Civ. Code § 34.7 (West 1982)..... 12

Cal. Civ. Code § 49 (West 1982) 16

Cal. Civ. Code § 64 (West 1982) 12

Cal. Penal Code § 26 (West 1988) 12

TABLE OF AUTHORITIES – Continued

Page

MISCELLANEOUS:

Anthony, *Religious Movements and Brainwashing Testimony: Evaluating Key Testimony*, in T. Robbins & D. Anthony, eds., **In Gods We Trust: New Patterns of Religious Pluralism in America** (2d ed. 1990) 18

M. Eliade, 7 *Encyclopedia of Religion* (1987) 7

J. Madison, *Memorial and Remonstrance Against Religious Assessments* 18

T. Robbins, *Civil Liberties, Brainwashing and Cults: A Select Annotated Bibliography* (1979) 17

No. 89-1398

In The

Supreme Court of the United States

October Term, 1989

ROBIN GEORGE,

Petitioner,

v.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, Fourth Appellate District, Division One

BRIEF FOR THE ISKCON RESPONDENTS IN OPPOSITION

Respondents International Society for Krishna Consciousness (ISKCON) of California,[1] ISKCON of New York, ISKCON of Louisiana, and ISKCON of Canada respectfully urge this Court to deny the petition for certiorari in this case.[2]

---

[1] Petitioner misstates respondents' name in the caption.

[2] ISKCON of Southern California, ISKCON of Los Angeles, ISKCON of New Orleans, ISKCON (Ontario), ISKCON of

(Continued on following page)

STATEMENT

Petitioner, a former member of the religion of Krishna Consciousness, seeks to reinstate a $6.75 million award against her former church, of which $5 million is punitive, on a claim of religious "brainwashing." This verdict was reversed by the Court of Appeal.

1. *The facts*. Petitioner, Robin George, joined the religion at the age of 15, which under California law is above the age of consent. Pet. App. 40a, 41a-42a. She "was a bright and gifted high school student of above-average intelligence and maturity." *Id.* at 41a. She joined the religion of her own free will and remained in the religion of her own free will; there was no coercion at any time, whether by force, threat of force, economic sanction, or fraud. *Id.* at 32a, 48a; see also *id.* at 5a. While living at home, Robin read the Krishna scriptures, adopted Krishna styles of dress and appearance, passed out Krishna literature at school, adhered to Krishna diet, erected a Krishna shrine in her bedroom, and arose before dawn each day to chant on her prayer beads and perform religious devotions. Pet. App. 5a-6a. Notwithstanding their earlier promise to allow Robin to explore religions of her choice (*id.* at 4a; 3 RT 494, 7 RT 1165), her parents forced her to destroy her shrine and alter her diet, confiscated her prayer beads, and ordered her to cease her religious devotions and attendance at the temple. *Id.* at 6a; 6 RT 962.

After her parents forbade her to engage in the practices of the religion, Robin "decided to run away from home" (*id.* at 41a), she "formulated a plan" for so doing (*id.* at 7a), and she carried it out with the help of her best friend (*id.*). Robin then went to the local Krishna temple, where she appealed for

---

(Continued from previous page)

Western Canada, ISKCON of New Talavan, ISKCON of America, and Bhaktivedanta Book Trust are listed by petitioner as respondents (Pet. i), though they were not appellants below. It is true that their legal rights and obligations could be affected by reversal of the judgment below, and they therefore join in this brief.

help to evade her parents so that she could continue in the practice of the religion. According to the Court of Appeal, Robin "actively sought defendants' assistance and fully cooperated in their efforts to hide her from her parents" (*id.* at 46a n.22).[3] During the year she was in the religion, Robin was never mistreated; her "religious duties and living conditions were identical to all the other Krishna devotees who voluntarily chose the Krishna lifestyle." *Id.* at 47a. At the end of this period, respondents returned her to Los Angeles, where she ran away again and eventually rejoined her family. *Id.* at 26a.

Petitioner now attributes her decision to run away from home to respondents' "interfere[nce]" (Pet. 5), based largely on alleged statements by respondent Richard (then called by his Sanskrit name Rsabadeva), who was President of the Laguna Beach temple,[4] to the effect that Robin had to leave home and move into a temple and that she should abandon her education. *Id.* Petitioner's account of Richard's statements is, with one exception, consistent with the account given by the Court of Appeal in its initial opinion. See Pet. App. 6a.[5] Petitioner neglects to point out, however, that the Court of Appeal subsequently made modifications in its opinion, which bear significantly on this issue. See Pet. App. 105a.

---

[3] In respondents' petition, No. 89-1399, at 9, respondents acknowledge that their assistance to Robin may have been a civil wrong against her parents, actionable under appropriately defined legal standards. The question in this case is whether that assistance constituted false imprisonment of Robin or the intentional infliction of emotional distress against Robin.

[4] Respondent Richard has since been expelled from the religion and is no longer a member of any ISKCON organization.

[5] The court did not, however, make any finding that Richard said that "[s]chool was utterly useless, and Robin should not do her homework or attend classes" (Pet. 5).

First, the court noted that "Robin never testified that absent [Richard's] representations she would not have left home." Pet. App. 105a. This contradicts petitioner's premise that respondents' alleged "interference" was the but-for cause of her decision to run away.

Second, the court acknowledged the existence of conflict in the testimony regarding Richard's statements to Robin, which it had not acknowledged in its initial opinion. The contents of Richard's discussions with Robin were hotly contested at trial; Richard denied making any of the statements attributed to him at page 5 of the petition. See 15 RT 2866, 2867, 2876, 16 RT 3186. In particular, when asked whether he had ever told Robin that she had to live in the temple, Richard answered: "I actually did quite the opposite, encouraging people to execute their spiritual life independently on their own. I was very liberal in that matter. As I remember it, I liked the idea that she was going to high school with a sari and was somehow present to preach to others of her peers in high school. I thought that was very nice." *Id.* at 2867.[6] Another devotee testified that it was Robin who wished to leave California, and that he attempted to dissuade her. 37 RT 7188. "No, I have to leave," Robin said. "It's my decision." *Id.* After reading the motion for rehearing, the Court of Appeal added a paragraph to its opinion presenting part of Richard's side of the story. Pet. App. 105a. Contrary to the impression created by the petition, the court did not resolve the testimonial conflict in favor of petitioner. Rather, the court sidestepped the factual conflict by "*[a]ssuming* Rsabadeva [*i.e.*, Richard] made such representations to Robin." Pet. App. 105a (emphasis added).[7]

---

[6] Robin herself testified that she was aware that it was permissible for members to live at home rather than in the temple. 10 RT 1808-09, 11 RT 1866-67.

[7] While plaintiffs who prevail at trial in an ordinary tort suit are entitled to resolution of all material factual disputes in their favor, where

(Continued on following page)

Should this Court seriously consider granting this petition for the purpose of determining whether the religious proselytization and conversion of a minor can be made the basis of civil liability, it should be aware that the record is in conflict on the crucial facts.

It would serve little purpose to comment in detail on the petition's statement of facts regarding petitioner's experiences after she ran away from home, since none of the discrepancies bears directly on the merits of the petition. See Sup. Ct. R. 15.1.[8] The most important error in the petition's account is an error of omission. Petitioner neglects to inform the Court of the finding of the Court of Appeal, based on an essentially uncontradicted record, that at all times Robin was perfectly free to contact her parents or anyone else, perfectly free to leave the temples in which she was staying, and perfectly free to abjure the religion. As the Court of Appeal stated: "Robin admitted she was never physically restrained by the defendants and that her residence in the various

---

(Continued from previous page)

First Amendment rights are at stake the appellate courts have an obligation " 'to make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.' " *Bose Corp. v. Consumers Union*, 466 U.S. 485, 499 (1984), quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-86 (1964). Thus, neither the Court of Appeal nor this Court is bound by petitioner's one-sided account of the facts of the case.

We also note that despite the length of the trial record in this case, petitioner has not included any references to the trial transcript to support the factual assertions made in the petition.

[8] At pages 8-9, the petition lodges serious accusations of unethical conduct against Barry Fisher, an attorney of high reputation, Chair of the Religious Freedom Subcommittee of the ABA Section on Individual Rights and Responsibilities, who was at that time representing ISKCON in certain First Amendment litigation. Although this accusation has no direct bearing on the merits of the petition, respondents wish to point out to this Court that the Court of Appeal modified its opinion to remove all such references to Mr. Fisher after receiving a letter from him refuting the charges. Pet. App. 102a-104a.

Krishna temples was not against her will." Pet. App. 32a; see also *id.* at 32a-35a.

2. *The lawsuit.* After she returned home, Robin renounced the Krishna religion and became active in an "anti-cult" group called the Citizens Freedom Foundation. Pet. App. 27a. She later joined with her mother, Marcia George, in bringing this lawsuit against her former church. The "centerpiece" of the case (*id.* at 31a) was her claim of "false imprisonment." Robin also brought a claim for intentional infliction of emotional distress.[9] The theory of the case was that Robin had been "brainwashed" into joining and remaining in the religion. The Court of Appeal summarized petitioner's argument as follows (Pet. App. 32a-33a, footnote omitted):

> At trial, even the Georges recognized this was not a prototypical case of false imprisonment. Robin admitted she was never physically restrained by the defendants and that her residence in the various Krishna temples was not against her will. To counter these facts, plaintiffs introduced expert testimony from Drs. Margaret Singer and Sydney Smith to the effect that defendants "brainwashed" Robin into joining the Krishna movement. In particular, Dr. Singer testified Robin's "will had been overborne" by late October 1974 such that her decision to run away from home on November 16 was not a product of her own free will. (28 RT 5279, 5295.) Both Dr. Singer and Dr. Smith identified several features of the Krishna faith which, they argued,

---

[9] In addition to these claims, Robin also brought a claim for wrongful death in her capacity as heir to her father, who died four months after Robin returned home, and a claim for libel. Marcia brought claims for intentional infliction of emotional distress and for libel. The jury returned a verdict for the plaintiffs on all claims. The Court of Appeal, while overturning Robin's verdicts for false imprisonment, emotional distress, and libel, upheld the other awards. Respondents have filed a petition for certiorari to challenge the affirmance of the remaining awards, No. 89-1399.

contributed to rendering Robin incapable of exercising freedom of choice including a low-carbohydrate vegetarian diet, reduced amounts of sleep and chanting as a means of religious ritual. (28 RT 5349-5350; 31 RT 5937-5939.)

Plaintiffs embellished their theory with testimony demeaning the Krishna religion and calling into question the truth of its beliefs and wholesomeness of its rituals.[10] Despite frequent and repeated objections by respondents' counsel under the First Amendment (see, *e.g.*, 21 RT 4060), the trial court allowed former members and "anti-cult" activists to testify as "experts" on the faith and allowed plaintiffs' counsel to appeal to the fears and prejudices of the jury regarding the religion of Krishna Consciousness.

Plaintiffs' experts testified that Krishna religious beliefs were "frightening" (27 RT 5180) and "damaging" (31 RT 5941). Dr. Singer testified that Krishna beliefs about "proper mental state" and reincarnation (which she described in pejorative language as the belief that Robin could be "reborn again as a worm in stool") were a "lie" (27 RT 5172), and that Robin was especially "vulnerable" to such "dreadful things" (*id.* at 5172-73) because she had not previously been exposed to the "seamier side of life" (*id.* at 5174). Dr. Smith testified that Robin's "active practice of the religion" regarding diet, morning devotions, and chanting amounted to "psychic abuse" (31 RT 5977); that Krishna "moral precepts" were

---

[10] The religion of Krishna Consciousness is recognized by all authorities as "a bona fide religion with roots in India that go back thousands of years." *People v. Murphy*, 98 Misc. 2d 235, 413 N.Y.S.2d 540, 544 (Sup. Ct. 1977); see *ISKCON v. Barber*, 650 F.2d 430 (2d Cir. 1981); M. Eliade, 7 *Encyclopedia of Religion* 266, 266-68 (1987). Krishna Consciousness, which is formally known as *Gaudiya Vaishnavism*, is a monotheistic, missionary branch of devotional Hinduism. Many of the beliefs and practices insulted and drawn into question by petitioner at trial are common to Hindus generally. For an authoritative account of the position of Krishna Consciousness within the Hindu community and the effect of this litigation on Hindus generally, see the Brief for the World Hindu Assembly of North America (Vishwa Hindu Parishad), *et al.*, as *amici curiae* in support of the petition in No. 89-1399.

"damaging" (*id.* at 5941); and that Robin's beliefs in hell and in "other world creature[s]" were a "fantasy" (22 RT 5924-25).

The testimony of plaintiffs' witnesses showed a decided preference for Judeo-Christian beliefs and practices over Krishna beliefs and practices, even when they are functional equivalents. For example, Dr. Smith testified that Krishna chanting is "psychologically damaging," though he was hesitant to say the same thing about the rosary. 31 RT 5937. Similarly, he attacked the Krishnas' monastic practices but refused to extend the same criticism to Catholic convents. *Id.* at 5928-29. Dr. Singer expressly contrasted Krishna Consciousness to "institutionalized religions" (giving the examples of Baptist, Episcopal, or Jewish), on the ground that the latter provide "full information" to converts because they "want sort of fully informed consent to join." 27 RT 5166. On cross-examination, Dr. Singer acknowledged that Robin had attended some 20 lectures on Krishna Consciousness while still living at home and before deciding to join (29 RT 5384), and that she had been informed of, understood, and accepted the precepts and practices of the religion by that time (*id.* at 5404).

Ed Senesi, a former member described by the trial judge as a "disenfranchised or defrocked or derobed Krishna" (21 RT 4175), who had no involvement whatsoever with the Robin George affair, was allowed to testify as an expert on the tenets and practices of the Krishna religion (22 RT 4268-69). He testified, among other things, that in the "Hare Krishna philosophy" it is "okay to lie" (*id.* at 4270); that female devotees are encouraged to "prostitute themselves by going out in disguises and using deceptive ruses to collect money and distribute books" (*id.* at 4278); and that devotees are taught that those who oppose the religion are demons (*id.* at 4296-97). Witnesses for respondents were permitted to present the other side of these questions of interpretation of Krishna doctrine (*e.g.*, 21 RT 3972-73 (denying teaching about demons); *id.* at 3974-75 (denying teaching about lying and accusations of deception in fundraising)). The effect of the conflicting testimony, however, was to place in the hands of

the jury the responsibility to determine true Krishna doctrine. As the trial judge commented when deliberating over whether to admit Senesi's testimony (21 RT 4080):

> I had not intended this trial, at least – I had not understood this trial to be a test of religious philosophy or the validity of religion or a religious belief or set of tenets. Of course, what I intended and what may happen may be two different things.

The plaintiffs' strategy of trying the religion instead of the facts of the case continued into the arguments of counsel. Opening and closing arguments were studded with appeals to the jury to punish the Krishna religion not just for any alleged misdeeds it may have committed in this case, but for its reprehensible beliefs and practices. Counsel characterized the religion as a "pious fraud" (1 RT 212) and a "pernicious evil" (45 RT 8653). He described the sacred religious ritual of *sankirtan* as sending children "out on the streets to lie and to cheat and to steal so that they can fill the coffers of the quote unquote, church." *Id.*[11] He engaged in an extended analogy between the Krishna religion and Dracula, accusing the religion of trying to lure young girls like Robin to "destruction." 44 RT 8513-14. He exhorted the jury to "imagine your child going to the Hare Krishna temple," where they would be told that their parents are "karmi meat eating demon[s]." *Id.* at 8499. The jury awarded the plaintiffs $32,587,500, of which more than $29 million was punitive.

3. *The appeal.* Finding that the punitive damages were excessive, the trial court reduced the jury award to $9,737,500, and the plaintiffs accepted the remittitur. Pet. App. 30a. On appeal, the Court of Appeal upheld the verdict as to Marcia George and the wrongful death claim on behalf of Jim George, but reversed the verdict as to Robin on both

---

[11] Even in this Court petitioner repeats the canard that *sankirtan* is a "purely secular" form of "begging." Pet. 19 n.6. Every court that has examined the matter has concluded that *sankirtan* is a protected religious practice. *E.g., ISKCON v. Barber*, 650 F.2d 430 (2d Cir. 1981); *Jaffe v. Alexis*, 659 F.2d 1018, 1020 (9th Cir. 1981); *United States v. Silberman*, 464 F. Supp. 866, 870 (M.D. Fla. 1979), and cases cited therein.

the false imprisonment and the emotional distress claims.[12] The court's grounds for reversing these verdicts are discussed in detail in Section I of the Argument, below.

ARGUMENT

The petition should be denied because the judgment below rests on adequate and independent state grounds, because the petition raises nothing more than a quarrel with the court below over the facts of this case, and because the alternative holding of the court below, on federal constitutional grounds, is clearly correct.

I. The Judgment Below Rests On Adequate And Independent State Grounds

"This Court long has held that it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Harris v. Reed*, 109 S. Ct. 1038, 1042 (1989), citing *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590, 635-36 (1875). "By its very definition," this doctrine precludes review of an alternative state law holding "that is a sufficient basis for the state court's judgment, even when the state court also relies on federal law." *Harris*, 109 S. Ct. at 1044 n.10; see also *Fox Film Corp.*, 296 U.S. at 210.

In this case, it is "clear from the face of the [Court of Appeal] opinion" that the judgment petitioner seeks to have reviewed rests on adequate and independent state grounds. See *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). Thus, "the same judgment would be rendered by the state court

---

[12] Robin and Marcia were awarded $2 million jointly in punitive damages for the intentional infliction of emotional distress. Although Robin's claim for intentional infliction was reversed, the Court of Appeal left the entire $2 million verdict in place, awarding it solely to Marcia. Pet. App. 107a-108a.

after [this Court] corrected its view of federal laws," and this Court's review "would amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945).

The Court of Appeal's discussion of the false imprisonment claim – the "centerpiece" of the trial (Pet. App. 31a) – focused largely on state law. Citing *only* state law authorities, the Court of Appeal held that "the tort of false imprisonment . . . necessarily involves a physical restraint of the plaintiff" or "the threat" of such physical restraint. Pet. App. 31a-32a (emphasis in original).[13] The court concluded that "this was not a prototypical case of false imprisonment," since "Robin admitted she was never physically restrained by the defendants and that her residence in the various Krishna temples was not against her will." Pet. App. 32a; see also *id.* at 46a n.24 (finding "no evidence Robin was ever threatened with physical force").[14]

The Court of Appeal then rejected each of petitioner's three arguments for extending liability for false imprisonment beyond the context of physical restraint. The court held: (1) there could be no claim of false imprisonment based on the creation of obstacles to movement because there was never any "threat of force of any kind in this case" (Pet. App. 37a); (2) there could be no claim of false imprisonment based on

---

[13] The "one apparent exception" to this rule, fraud or deceit, was not present as to petitioner in this case. Pet. App. 32a & n.16.

[14] This case must therefore be distinguished from *Wollersheim v. Church of Scientology*, 260 Cal. Rptr. 331 (Cal. App. 1989), *cert. pending*, Nos. 89-1361 & 89-1367. The California Court of Appeal in *Wollersheim* upheld liability for intentional infliction of emotional distress because there was "substantial evidence" that the church coerced Wollersheim into continuing with its "auditing" religious practices by means of *both economic and physical coercion*. See *id.* at 342 (church "carefully designed [retribution] with the specific intent it bankrupt" Wollersheim's business); *id.* at 345 (threat of facing "freeloader debt" coerced continued participation in "auditing"); *id.* at 346 (Wollersheim was "held . . . captive" and exposed to auditing "under threat of physicial compulsion").

Robin's status as a minor because she was above the age of consent (*id.* at 37a-42a);[15] and (3) there could be no claim of false imprisonment based on "brainwashing" because the California Supreme Court has declined to recognize the "coercive persuasion" theory as a substitute for the proof of force (*id.* at 43a-44a). In support of the latter proposition, the court read *Molko v. Holy Spirit Association*, 46 Cal. 3d 1092, 252 Cal. Rptr. 122, 762 P.2d 46 (1988), *cert. denied*, 109 S. Ct. 2110 (1989), as "a reaffirmation that physical force or the threat of it is a necessary element of a false imprisonment cause of action even in the context of a brainwashing claim." Pet. App. 44a.

Only then did the Court of Appeal refer to constitutional principles. The court held that an attempt to impose "[t]ort liability based on dietary restrictions, methods of worship, and communal living" would be "inimical to the free exercise of religious liberty." *Id.* at 44a. As if to underscore the distinction from its state law holding, the court noted specifically that this conclusion was based on "another portion of the *Molko* opinion which defends against a First Amendment argument" (*id.*).

Since the court held that a false imprisonment claim under state law requires physical force or threats, and that there was no such evidence in this case, the judgment reversing the false imprisonment claim clearly rests on an adequate and independent state law ground.

For similar reasons, adequate and independent state grounds also underlie the Court of Appeal's rejection of petitioner's claim for intentional infliction of emotional distress. The Court of Appeal rejected petitioner's contention that the Krishna adherents' conduct toward Robin was

---

[15] The court noted that under California law, minors over the age of 14 "are capable of commiting and being held responsible for a crime (Pen. Code, § 26), obtaining an abortion or birth control devices (Civ. Code, § 34.5), consenting to certain types of medical and mental health treatment (Civ. Code, §§ 25.9, 34.7 et seq.) and being emancipated (Civ. Code, § 64)." Pet. App. 40a.

"outrageous" as that term is defined under California tort law.[16] The court stated that "[m]any of the acts relied on by Robin George as 'outrageous' are hardly uncommon among cloistered religious groups" (Pet. App. 45a) and noted that "Robin's religious duties and living conditions were identical to all the other Krishna devotees who voluntarily chose the Krishna lifestyle" (*id.* at 47a). Indeed, the court found that the evidence could not support the conclusion that any of respondents' acts were performed "with the intention of inflicting emotional distress on Robin or even in reckless disregard of that possibility." *Id.*, citing *Agarwal v. Johnson*, 25 Cal. 3d 932, 946-47, 160 Cal. Rptr. 141, 603 P.2d 58 (1979). The absence of either one of these elements alone sufficed to reverse petitioner's emotional distress claim under California law. *Davidson v. City of Westminster*, 32 Cal. 3d 197, 209-10, 185 Cal. Rptr. 252, 259, 649 P.2d 894 (1982).

II. The Petition Raises Nothing More Than A Disagreement With The Court Below Over The Facts Of The Case

The Issue Presented (Pet. i) itself betrays that the petition merely questions the Court of Appeal's factual premises. The Issue posed by petitioner is: "Does the First Amendment insulate Respondents from liability for the false imprisonment and intentional infliction of emotional distress upon Petitioner, a minor, when Respondents expressly deny that their tortious conduct was part of their religious beliefs?" This point is elaborated at pages 14-20, which contend that "Respondents' Conduct Was Purely Secular And Therefore Subject To The Court's Scrutiny." As the opinion below clearly shows, however, the Court of Appeal did not base its alternative constitutional holding on the factual predicate that

---

[16] Petitioner's statement that "[b]oth the trial court and the California Court of Appeal found that Respondents' conduct was 'outrageous' " (Pet. 23 n.8) is therefore misleading. The appellate court found respondents' conduct outrageous only with respect to Marcia, not with respect to Robin. This petition concerns only Robin's claims.

respondents' allegedly tortious conduct was "purely secular." On the contrary, the court assumed (as it had every reason to assume, based on the record and the briefs) that the conduct complained of – proselytizing, vegetarianism, chanting, *sankirtan*, monastic living, belief in reincarnation, and so forth – was intensely religious.

Petitioner supports her interpretation of the facts as follows (Pet. 19):

> At trial, Respondents admitted that this outrageous behavior was *not* part of their religious beliefs. In particular, Respondents denied that (1) a member of their religion must live in the temple, (2) isolation was part of their religion, or (3) a child-recruit would be encouraged to leave her Christian parents to avoid the parents' "corruptive influence" over the child. Respondents admitted that in this case, they were motivated by purely secular considerations.

This assertion is at best a distortion of the record. At trial, respondents denied that they told petitioner she must live in the temple or that she should leave home. See page 4, *supra*. To bolster Robin's testimony on this point, plaintiffs presented propensity evidence based on a highly inaccurate and pejorative depiction of Krishna religious teachings, including the claim that Krishna members must live in the temple. In their defense, respondents presented testimony by Richard Grant, then President of ISKCON of California, who explained Krishna religious tenets regarding living in the temple. See 20 RT 3770-82. As Grant stated:

> Amongst all the members of our religion some want to be priests, so they live in a temple. And some are attracted to missionary work. So missionaries, they live in a temple. And some are attracted to becoming monks or nuns, and they would live in a temple. So persons of that inclination who are members of our religion, we instruct them to study and be trained in the temples. Of course, there is a vast number of members of our religion who don't have those inclinations and they live outside the temple.

Id. at 3771. He further explained that while it is not necessary for all members of the Krishna religion to live in a temple ashram, those who live outside are "in jeopardy of becoming materialistic." 21 RT 3972. Thus, although living in the temple is not a requirement of the religion, neither is it "motivated by purely secular considerations." It is a religious commitment.[17]

Similarly, the other aspects of life in a Krishna community that were the basis for petitioner's "brainwashing" claim – vegetarianism, early morning devotions, chanting, and so forth – are religious and not secular in motivation.[18] Respondents did not, and do not, "admit[] that in this case, they were motivated by purely secular considerations," as the petition presumptuously asserts (at 19). The Court of Appeal decided the case on the factual premise that the "dietary restrictions, methods of worship, and communal living arrangements and schedules" in Krishna temples constitute an exercise of religion (Pet. App. 44a). Petitioner's attempt to relitigate that factual premise – which is in any event obviously correct – does not warrant review by this Court.

In another, more far-reaching sense, the petition is based squarely on a disagreement with the Court of Appeal over the facts. At the beginning of the Reasons for Granting the Writ (Pet. 10-11), petitioner summarizes the issue as whether respondents should be permitted "to use the First Amendment to shield their kidnapping, mistreatment and surreptitious imprisonment" of petitioner. To the Court of Appeal, however, the question was *whether* respondents kidnapped, mistreated, or imprisoned Robin – and the answer was an unambiguous "No." The Court of Appeal concluded that petitioner joined the Krishnas of her own free will (Pet. App. 32a, 41a-42a),

---

[17] Even plaintiffs' own putative "expert" on Krishna beliefs at trial, the former member Ed Senesi, testified that Krishna scriptures encourage devotees to live in the temple. 22 RT 4294-95.

[18] Again, petitioner's own "expert" witnesses confirmed that these practices were religious. See, *e.g.*, testimony of Dr. Margaret Singer, 28 RT 5344-45, 5348-50 (discussing chanting, diet, and early rising).

was treated with the same consideration extended to every other devotee (*id.* at 47a), and was free to leave at any time (*id.* at 32a n.17, 36a-37a). Respondents have not contended, and the Court of Appeal did not hold, that the First Amendment is a shield against liability for kidnapping, mistreatment, or imprisonment.

III. The Court Of Appeal's Conclusion That Petitioner's Claims Of False Imprisonment And Intentional Infliction Of Emotional Distress Violate The Free Exercise Clause Is Clearly Correct

Petitioner contends that the practices of the Krishna religion amount to a form of "coercive persuasion" and that the state has a compelling interest in "curtailing" it. Pet. 20-21, 23. The reason, according to petitioner,[19] is that "coercive persuasion" techniques "inhibit – rather than promote – religious freedom." Pet. 21-22; see *id.* at 27-28. This is dangerous nonsense.

As recognized by the Court of Appeal, the religious practices complained of in this case are "hardly uncommon among cloistered religious groups" (Pet. App. 45a). Chanting is a form of prayer; dietary restrictions, including vegetarianism and even more severe forms of fasting, are common

---

[19] In addition to the justification discussed in text, petitioner suggests two other "compelling state interest[s]": (1) keeping petitioner at home with her parents until she reached the age of consent, and (2) preserving the family unit and nurturing the parent-child relationship. Pet. 24, 26. These arguments are obviously irrelevant to the "coercive persuasion" theory, since they would be equally applicable to a cause of action against a person who persuaded a minor to leave home with the best of arguments. These are simply attempts to relitigate before this Court petitioner's claim for false imprisonment based on her status as a minor, which was rejected by the Court of Appeal on the state law ground that Robin had already reached the age of consent. Pet. App. 37a-42a. It should also be noted that the State has no compelling interest in this case in enforcing parental rights under California Civil Code § 49, invoked at Pet. 24-25 n.9, since the statute of limitations ran before Marcia George raised that claim.

religious practices; monastic living is an ancient and venerable way of life; the early morning devotions of the Krishna devotees resemble the schedules of prayer and worship followed even today in monasteries of other faiths.[20] If ex-members could sue their former churches on the basis of such practices, then the Free Exercise Clause would be rendered meaningless.

Although accepted by a few lower courts (Pet. 21), the theory of "coercive persuasion", as articulated by petitioners' leading witness, Dr. Singer, and others, has been thoroughly discredited by the scientific community. The scientific evidence is summarized in the Brief for the National Council of Churches, *et al.* as *amici curiae* in No. 89-1399; see also T. Robbins, *Civil Liberties, Brainwashing and Cults: A Select Annotated Bibliography* (1979). A federal court of appeals recently has reversed the admission of Singer's testimony in another case because of a lack of "*any* evidence that Dr. Singer's theory" of coercive persuasion "has a significant following in the scientific community, let alone general acceptance." *Kropinski v. World Plan Executive Council*, 853 F.2d 948, 956-57 (D.C. Cir. 1988). *Accord United States v. Fishman*, No. CR-88-0616-DLJ (N.D. Cal. Apr. 13, 1990).[21]

---

[20] While it does not matter for legal purposes, we should like to correct a misstatement in the Court of Appeal's opinion regarding the timing of early morning devotions in the Krishna faith (Pet. App. 6a). They are not held at 2:30 a.m., but shortly before dawn, usually about 4:00 a.m. The record shows that Robin conducted her devotions at 4:00 a.m. 6 RT 949-50.

[21] Dr. Singer has testified in numerous cases against what she calls "new movement groups" (27 RT 5166), always on the side of the plaintiffs. Her methodology and conclusions have been repudiated by the professions of psychology and the study of religion. For example, many leading mental health professionals and theologians joined in an *amicus curiae* brief in the California Supreme Court in *Molko v. Holy Spirit Association*, 46 Cal.3d 1092, 252 Cal. Rptr. 122, 762 P.2d 46 (1988), *cert. denied*, 109 S. Ct. 2110 (1989), to contradict her theory. Similarly, the Society for the Scientific Study of Religion, a respected academic organization, filed an *amicus curiae* brief in the court below in this case,

(Continued on following page)

This Court has rejected a similar theory in another context. *United States v. Kozminski*, 108 S. Ct. 2751 (1988).

But we do not rest our objection to the theory of coercive persuasion on the scientific evidence, devastating though it is to petitioner's position. We contend that the state has no authority to to judge whether a religious conversion is arrived at voluntarily, in the absence of objective indications of force. This lawsuit is nothing more than "an arrogant pretension" that "the Civil Magistrate is a competent Judge of Religious truth." J. Madison, *Memorial and Remonstrance Against Religious Assessments*, ¶ 5, reprinted as an appendix to the dissenting opinion in *Everson v. Board of Education*, 330 U.S. 1, 67 (1947). See *Kozminski*, 108 S. Ct. at 2763 (warning against allowing suits against religious leaders for psychological "coercion" on the basis of "religious indoctrination").

Petitioner's notion that juries should be charged with distinguishing between conversions based on "free choice and conscience – as nurtured by the free flow of information" (Pet. 27) and conversions based on "coercive persuasion" (Pet. 20) is utterly foreign to the First Amendment. It is no business of a jury to judge whether a religious conversion is voluntary or invalid. Believers "may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." *United States v. Ballard*, 322 U.S. 78, 86 (1944).

(Continued from previous page)

providing a lengthy and devastating critique of her position. See also Anthony, *Religious Movements and Brainwashing Litigation: Evaluating Key Testimony*, in T. Robbins & D. Anthony, eds., **In Gods We Trust: New Patterns of Religious Pluralism in America** 295-344 (2d ed. 1990).

It bears mention that Dr. Singer's five days of testimony regarding the Krishna faith were based, by her own admission, on interviews with only four active and three former members of the religion and her oral recollection of two interviews with Robin some seven years after she had left the religion, at which point Robin was a party to this litigation. 29 RT 5346-47, 5382, 5446-48.

Juries are not entitled to say when others should pray, what they should eat, or where they should live, and they certainly are not entitled to impose compensatory and punitive damages on a religion for the unconventional choices made by its adherents. Juries must not be asked to judge whether demons or hell are a "fantasy," whether moral precepts are "damaging," whether Krishna beliefs are "lies," or whether the entire Krishna faith is a "pernicious evil" and a "pious fraud." As this Court has stated, "Courts are not arbiters of scriptural interpretation." *Thomas v. Review Board*, 450 U.S. 707, 716 (1981).

The threat of civil liability predicated on religious acts that a jury finds distasteful – and especially of punitive damages – would seriously inhibit "the vigorous exercise of First Amendment freedoms." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349 (1974). Indeed, as this case shows, uncontrolled jury awards can virtually destroy a religion. When damages vastly exceed the financial resources of the religion, the only way to satisfy the judgment is to seize and sell religious properties, which deprives innocent adherents of their places of worship. Even when such lawsuits are not ultimately successful, the financial and psychological drain of litigation imposes a serious burden and may cause unconventional religions to conform their religious practices more closely to the norms of secular society.

Robin George was free to join the religion and free to leave. Respondents ask only that others, who have made a different choice, be protected in their freedom.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

MICHAEL W. MCCONNELL
Counsel of Record
ANDREW L. FREY
THOMAS C. BERG
MAYER, BROWN & PLATT
190 S. La Salle St.
Chicago, IL 60603
(312) 701-7201

EDWARD MCGLYNN GAFFNEY, JR.
1149 S. La Jolla Ave.
Los Angeles, CA 90035
(213) 934-8307

DAVID LIBERMAN
2049 Century Park East
Suite 3160
Los Angeles CA 90067
(213) 277-9288

April 18, 1990